

333.91

N7M



## MONTANA'S WATER PROBLEMS

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Water Resources Division

Sam W. Mitchell Building

Helena, Montana 59601

January 14, 1972

oalc 41716757

Montana State Library



3 0864 1006 6878 2

## PREFACE

"It is virtually an indiscriminate scramble for water-rights without regulation or even an intelligent idea of what they really require. The result is that the county records become littered with filings of unknown value or validity....There is no regulation, no supervision and no protection to any one. Our present recording system is farcical....A land system which would accept a score of filings for the same quarter section of land and then leave the settlers to fight for its possession in the courts, would not be held in high esteem. A water-right law which places no restrictions on the claims to a stream is just as illogical and as fraught with needless abuses....A radical change in our present water-right laws, placing the stream flow under the supervision and control of the state seems necessary to meet the changing conditions of our commonwealth....I, therefore, recommend: That our present water-right laws be changed to embody a system of records and regulations in harmony with the laws of our neighboring states, where the change has been so satisfactory." <sup>1</sup>

<sup>1</sup> Mahon, Archie; 1911-1912, Montana State Engineer, Fifth Biennial Report, pp. 8-10



## ACKNOWLEDGEMENTS

Compiled and Edited by:

Hans L. Bille.....Surface Water Rights Coordinator  
Ronald J. Guse.....Ground Water Rights Coordinator

## TABLE OF CONTENTS

PART I.	Page
SURFACE AND GROUND WATER LAWS.....	1
A General History and Status of Montana's Present Laws as they pertain to the Appropriation of Surface and Groundwater.....	1
PART II.	
MORATORIUM.....	9
The Ten-Year Moratorium (1968-1978) as it related to Montana's Water Laws and State Water Plan.....	9
PART III.	
CONSTITUTIONS: WATER RESOURCES.....	15
Montana Constitution.....	15
North Dakota Constitution.....	16
Idaho Constitution.....	16
Wyoming Constitution.....	17
Colorado Constitution.....	18
Alaska Constitution.....	19
New Mexico Constitution.....	20
PART IV.	
SELECTED STATE STATUTES.....	21
Idaho Statute - Section 42-101.....	21
Kansas Statute - Section 82a-702.....	21
Washington Statute - Section 90. 03. 010.....	22
Utah Statute - Section 73-1-1, 73-1-3.....	22
Colorado Statute - Section 148-21-2.....	23
California Statute - Section 102.....	23



PART I  
SURFACE AND GROUND WATER LAWS

A GENERAL HISTORY  
AND  
STATUS OF MONTANA'S PRESENT LAWS AS THEY PERTAIN  
TO THE  
APPROPRIATION OF SURFACE AND GROUNDWATER

SURFACE WATER RIGHTS

Our concern over surface water rights in Montana is more than a century old. When the first Territorial Legislature, meeting in Bannack, adopted the common law of England on January 11, 1865, the Territory's legal profession assumed that it had adopted the Doctrine of Riparian Rights. This doctrine had evolved in England and in the eastern United States where the annual rainfall is generally more than twenty inches. It gave the owners of land bordering a stream the right to have that stream flow past their land undiminished in quantity and unaltered in quality and to use it for household and livestock purposes. The law restricted the use of water to riparian owners and forbade them to reduce appreciably the stream flow, but the early miners and ranchers in Montana favored the Doctrine of Prior Appropriation which permitted diversion and diminution of the streams. Consequently, the next day the legislature enacted another law which permitted diversion by both riparian and non-riparian owners. Whether or not this action provided Montana with one or two definitions of water rights was not settled until 1921 when the Montana Supreme Court in the Mettler vs. Ames Realty case declared the Doctrine of Prior Appropriation to be the valid Montana water right law. "Our Conclusion," it said, "is that the common law doctrine of riparian rights has never prevailed in Montana since the enactment of the Bannack Statutes in 1865 and that it is unsuited to the conditions here . . .," (Mettler vs. Ames Realty Co., 61 M 152-171, 201 P 702).

The appropriation right which originated in California was used by the forty-niners to divert water from the streams to placer mine gold. They applied to the water the same rules that they applied to their mining claims - first in time, first in right and limitation of the right by beneficial use. Those who came to Montana gulches brought with them these rules, applying them to agriculture as well as to mining.

The main points of consideration under the Doctrine of Prior Appropriation are:

1. The use of water may be acquired by both riparian and non-riparian landowners.
2. It allows diversion of water regardless of the reduction of the water supply in the stream.
3. The value of the right is determined by the priority of the appropriation; i.e., first in time is first in right.
4. The right is limited to the use of the water. Stream waters in Montana are for public use (Article III, section 15, Montana Constitution), and the appropriator acquired only a right to their use. Moreover, this use must be beneficial.
5. A right to the use of water is considered property only in the sense that it can be bought or sold; its owner may not be deprived of it except by due process of law.





The State Legislature has provided methods for the acquisition, determination of priority and administration of the right. No right may be acquired on a stream without diversion of water and its application to a beneficial use. On unadjudicated streams, the Statutes stipulate that the diversion must be preceded by posting a notice at a point of intended diversion and by filing a copy of it within 20 days in the county clerk's office of the county in which the appropriation is being made. Construction of the means of diversion must begin within 40 days of the posting and continued with reasonable diligence to completion (Section 89-810 and 811, R.C.M., 1947). However, the Montana Supreme Court has ruled that an appropriator who fails to comply with the Statutes may still acquire a right merely by digging a ditch and putting the water to beneficial use (89-812, R.C.M., 1947).

To obtain a water right on an adjudicated stream one must petition the District Court having jurisdiction over the stream for permission to make an appropriation. If the other appropriators do not object, the court gives its consent and issues a supplementary decree granting the right subject to the rights of the prior appropriators (Section 89-829, R.C.M., 1947).

Montana laws do not require water users to file official records of the completion of their appropriations; therefore, it becomes advisable as soon as the demand for the waters of a stream becomes greater than its supply, to determine the rights and priorities of each user by means of an adjudication or water right suit. This action may be initiated by one or more of the appropriators who may make all the other claimants parties to the suit. The Judge of the District Court then examines all of the claims and issues a decree establishing priority of the right of each water user and the amount of water he is entitled to use. The court decree becomes in effect the deed of the appropriator to his water right.

Whenever scarcity of water in an adjudicated stream requires an allocation of the supply according to the priority of rights, the Judge, upon petition of the owners of at least 15 percent of the water rights affected, must appoint a water commissioner to distribute the water. Chapter No. 231, Montana Session Laws 1963, Senate Bill 55 amended Section 89-1001, R.C.M., 1947, to provide that a water commissioner be appointed to distribute decreed water rights by application of 15 percent of the owners of the water rights affected, or, under certain circumstances at the discretion of the Judge of the District Court - "provided that when petitioners make proper showing they are not able to obtain the application of the owners of at least 15 percent of the water rights affected, and they are unable to obtain the water to which they are entitled, the Judge of the District Court having jurisdiction may, in his discretion, appoint a water commissioner." After the Commissioner has been appointed the Judge gives his instructions on how the water is to be apportioned and distributed in accordance with the full terms of the decree.

The recording of appropriations in local courthouses provides an incomplete record of the water rights on unadjudicated streams. In fact, the county records often bear little relation to the existing situation. Since the law places no restrictions on the number or extent of the filings which may be made on an unadjudicated stream, the total amount of water claimed is frequently many times the available flow. There are numerous examples of streams becoming over appropriated. Once six appropriators each claimed all the water in Lyman Creek near Bozeman. Before the adjudication of claims to the waters of Prickley Pear Creek, 68 parties claimed thirty times its average flow of about 50 cfs.



Today, the Big Hole River with an average flow of about 1,000 cfs has filings totaling 173,912 cfs. One is unable to distinguish in the county courthouse the perfected rights from the unperfected ones since the law requires no official recording of the completion of an appropriation. Recognition by the courts of unrecorded appropriations adds to the incompleteness of these records. To further complicate the situation, appropriators have used different names for the same stream in their filings. In Montana, many of the streams flow through several counties; consequently, water right filings on those inter-county streams are found distributed in two or more county courthouses. Anyone desirous of determining appropriations on a certain river or creek finds it difficult and expensive to examine records in several places. In addition, the records are sometimes scattered because the original nine counties of 1865 have now increased to 56. As the original counties have been divided and subdivided, the water right filings have frequently not been transcribed from the records of one county to the other. Thus, a record of an early appropriation in what is at present Powell County may be found in the courthouse of the original Deer Lodge County.

It can readily be seen that this system of recording offers little protection to rights in the use of water until they are determined by adjudication. In other words, an appropriator does not gain clear title to his water right until after adjudication, and then the title may not be clear because the Montana system of determining rights is also faulty. In the first place, adjudications are costly, sometimes extremely costly when they are prolonged for years. It is estimated that litigation over the Beaverhead River, which has lasted more than twenty years, has cost the residents of the valley nearly one-half million dollars. In the second place, unless the court seeks the advice of a competent irrigation engineer, the adjudication may be based upon inaccurate evidence; in the third place, if some claimant has been inadvertently left out of the action, the decree is not final and may be reopened for consideration by the aggrieved party. Another difficulty arises in determining the ownership of a water right when land under an adjudicated stream becomes subdivided in later years and the water is not apportioned to the land by deed or otherwise. There are no provisions made by law requiring the recording of specific water right ownership on deeds and abstracts.

The Legislative Session of 1957 passed Chapter 114 providing for the policing of water released from storage to be transmitted through a natural stream bed to the place of use. The owner of the storage must petition the court for the right to have the water policed from the storage reservoir to his place of use. If there are no objections the court may issue the right and appoint a water commissioner to distribute the water in accordance therewith. This law applies only to unadjudicated streams.

Administration of water on adjudicated streams is done by the District Court, but it has its drawbacks. The appointment of a water commissioner is often delayed until the shortage of water is acute and the court frequently finds it difficult to obtain a competent appointee for so temporary a position. The present administration of adjudicated streams which cross the county boundaries of judicial districts creates problems. Many of the water decrees stipulate head gates and measuring devices for proper water distribution, but in many instances the stipulation is not enforced, causing disagreement among water users.

Since a water right is considered property and may be bought and sold, the nature of water requires certain limitations in its use. One of the major difficulties encountered after an adjudication of a stream is the failure of the District Court to have control over the transfer of water rights from their designated places of use. The sale



## GROUNDWATER RIGHTS

Groundwater and surface water are often intimately related. In fact, it is difficult in some cases to consider one without the other. In times of heavy precipitation and surface runoff, water seeps below the land surface to recharge underground reservoirs which, in turn, discharge groundwater to streams and maintain their flow during dry periods. The amount of water stored underground is far greater than the amount of surface water in Montana, and, without seepage from underground sources it is probable that nearly all the streams in the state would cease to flow during dry periods.

It is believed that Montana's groundwater resources are vast and only partly developed. Yet, this resource is now undergoing accelerated development as the need for its use increases and economical energy for pumping becomes available. Continued rapid development without some regulation of its use would cause a depletion of groundwater in areas where the recharge is less than the withdrawal. Experience in other states has shown that once excessive use of groundwater in a specific area has started, it is nearly impossible to stop, and may result in painful economic readjustments for the inhabitants of the affected area.

Practical steps aimed at conserving groundwater resources as well as correcting related deficiencies in surface water laws became necessary in Montana. Prior to the Legislative Session of 1961, there was no legal method of appropriating groundwater. Proposed groundwater codes were introduced and rejected in four biennial sessions of the Montana Legislative Assembly - 1951, 1953, 1955 and 1959.

In 1961, during the 37th Legislative Session, a bill was introduced and passed creating a Groundwater Code in Montana (Chapter 237, Revised Codes of Montana, 1961). This bill became effective as a law on January 1, 1962, with the State Engineer of Montana designated as "Administrator" to carry out provisions of the Act. However, the 1965 Legislature abolished the office of the State Engineer and transferred his duties to the State Water Conservation Board, effective July 1, 1965. On July 1, 1967, the name of the State Water Conservation Board was changed to the Montana Water Resources Board. Therefore, the Montana Water Resources Board became the "Administrator" of this Act. (Now, Water Resources Division - Department of Natural Resources and Conservation)

Some of the important provisions contained in Montana's Groundwater Law are:

### Section 1. DEFINITIONS OR REGULATIONS AS USED IN THE ACT.

- (a) "Groundwater" means any fresh water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water. Fresh water shall be deemed to be the water fit for domestic, livestock, or agricultural use. The Administrator, after a notice of hearing, is authorized to fix definite standards for determining fresh water in any controlled groundwater area or subarea of the State.
- (b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.



- (c) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater can be obtained or through which it flows under natural pressures or is artificially withdrawn.
- (d) "Beneficial use" means any economically or socially justifiable withdrawal or utilization of water.
- (e) "Person" means any natural person, association, partnership, corporation, municipality, irrigation district, the State of Montana, or any political subdivision or agency thereof, and the United States or any agency thereof.
- (f) "Administrator" means the Montana Water Resources Board (Water Resources Division - Department of Natural Resources and Conservation) of the State of Montana.
- (g) "Groundwater area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single distinct body of groundwater, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations, should conditions dictate this to be desirable. For purpose of administration, large groundwater areas may be divided into convenient administrative units known as "sub-areas." (The remaining definitions were added during the 1971 Legislative Session)
- (h) "Notice of appropriation: means an optional form on which the appropriator notifies the administrator and files for record the intention to appropriate groundwater. This form filed alone does not give the appropriator the right to use groundwater. It must be followed by a notice of completion to establish a right.
- (i) "Notice of completion" means a form on which the appropriator notifies the administrator and files for record the completion of a well (notice of completion of ground water appropriation by means of well) or the completion of a development to withdraw ground water without a well as by subirrigation and other natural processes (notice of completion of ground water appropriation without a well).
- (j) "Declaration of vested ground water rights" means a form which was provided, for a period of four (4) years after January 1, 1962, for filing vested ground water rights. This form expired on January 1, 1966.

#### Section 2. RIGHT TO USE.

Rights to surface water where the date of appropriation precedes January 1, 1962, shall take priority over all prior or subsequent groundwater rights. The application of groundwater to a beneficial use prior to January 1, 1962, is hereby recognized as a water right. Beneficial use shall be the extent and limit of the appropriative right. As to appropriations of groundwater completed on and after January 1, 1962, any and all rights must be based upon the filing provisions hereinafter set forth, and as between all appropriators of surface water or groundwater on and after January 1, 1962, the first in time is first in right.





Montana's Groundwater Code now provides for three different types of forms available for filing water rights, depending upon the nature of the groundwater development. The use of the GW-4 Form, Declaration of Vested Groundwater Rights, expired on January 1, 1966.

Form GW-1, "Notice of Appropriation of Groundwater" - shall require answers to such questions as (1) the name and address of the appropriator; (2) the beneficial use for which the appropriation is made, including a description of the lands to be benefited if for irrigation; (3) the rate of use in gallons per minute of groundwater claimed; (4) the annual period (inclusive dates) of intended use; (5) the probable or intended date of first beneficial use; (6) the probable or intended date of commencement and completion of the well or wells; (7) the location, type, size and depth of the well or wells contemplated; (8) the probable or estimated depth of the water table or artesian aquifer; (9) the name, address and license number of the driller engaged; and (10) such other similar information as may be useful in carrying out the policy of this Act. This form is optional but it has an advantage in that after filing the Notice of Appropriation, a person has 90 days in which to commence actual excavation and diligently prosecute construction of the well. Otherwise, failure to file the Notice of Appropriation deprives the appropriator of his right to relate the date of the appropriation back upon filing the Notice of Completion.

Form GW-2, "Notice of Completion of Groundwater Appropriation by Means of Well" - this form shall require answers to the same sort of questions as required by Form GW-1 (Notice of Appropriation of Groundwater), except that for the most part it shall inquire into accomplished facts concerning the well or means of withdrawal, including (a) information as to the static level of water in the casing or the shut-in pressure if the well flows naturally; (b) the capacity of the well in gallons per minute by pumping or natural flow; (c) the approximate drawdown or pumping level of the well; (d) the approximate surface elevation at the well head; (e) the casing record of the well; (f) the drilling log showing the character and thickness of all formations penetrated; (g) the depth to which the well is drilled and similar information.

It shall be the responsibility of the driller of each well to fill out the Form GW-2, "Notice of Completion of Groundwater Appropriation by Means of Well," for the appropriator, and the latter shall be responsible for its filing.

Form GW-3, "Notice of Completion of Groundwater Appropriation Without Well" - is for the benefit of persons obtaining (or desiring to obtain) groundwater without a well, such as by subirrigation or other natural processes so as to enable such persons to describe the means of using groundwater; to estimate the amount of water so used; and requiring such other information pertinent to this particular type of groundwater appropriation.

Montana's Groundwater Code provided for a period of four (4) years after January 1, 1962, for filing vested groundwater rights. The deadline for filing was December 31, 1965. A person did not automatically lose his vested groundwater rights by failure to file within the four-year period, but in the event of a future groundwater dispute, he would bear the burden of proving his rights in court.

The 1971 Legislative Session amended a section of the Groundwater Code, stating that, any person desiring to file on groundwater put to beneficial use



prior to January 1, 1962, but not filed on by December 31, 1965 may file a "notice of completion." The appropriators right will commence on the date the notice is filed, except as otherwise provided in the Groundwater Code (89-2913 (h)).

It shall be recognized that all persons who have filed a Water Well Log Form as provided for under Sections 1 and 2 of Chapter 58, Session Laws of Montana, 1957, shall be considered as having complied with the requirements of this Act.

It is important to note that the groundwater law states, "UNTIL A NOTICE OF COMPLETION (Form GW-2 or GW-3) IS FILED WITH RESPECT TO ANY USE OF GROUNDWATER INSTITUTED AFTER JANUARY 1, 1962, NO RIGHT TO THAT USE OF WATER SHALL BE RECOGNIZED."

Copies of the appropriation forms used in filing on groundwater are available in the County Clerk and Recorder's office in each of Montana's 56 counties, or can be obtained upon request from the Water Resources Division - Department of Natural Resources and Conservation, Sam W. Mitchell Building, Helena, Montana 59601. It shall be the duty of the County Clerk in every instance to record and file the original copy of the appropriation, transmit the second copy to the Administrator (Water Resources Division - Department of Natural Resources and Conservation), and the third copy to the Montana Bureau of Mines and Geology. A fourth copy is to be retained by the appropriator (person making the filing). On certain forms (GW-2) the fifth copy is retained by the licensed well driller.

An accurate method of compiling data on the amount of water being used and the amount of water available for future use is essential in the administration and investigation of water resources. In areas where the water supply becomes critical, the groundwater law provides that the Administrator may define the boundaries of the aquifer and employ inspectors to enforce rules and regulations regarding withdrawals for the purpose of safeguarding the water supply and the rights of the appropriators. (See wording of the law for establishing a "controlled area," 89-2914 of the Groundwater Code.)

The filing of water right records in a central office under control of a responsible State agency provides an efficient means for the orderly development and preservation of our water supplies while protecting all appropriators.



PART III

CONSTITUTIONS: WATER RESOURCES

MONTANA CONSTITUTION

ARTICLE III, SECTION 15

Sec. 15. The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.



## NORTH DAKOTA CONSTITUTION

### Section 210

Section 210. All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

## IDAHO CONSTITUTION

### Article XV, Section 3

Section 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution.





WYOMING CONSTITUTION

ARTICLE 8

IRRIGATION AND WATER RIGHTS

Sec. 1. Water is state property. -- The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state.

Sec. 2. Board of control. -- There shall be constituted a board of control, to be composed of the state engineer and superintendents of the water divisions; which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the state and of their appropriation, distribution and diversion, and of the various officers connected therewith. Its decisions to be subject to review by the courts of the state.

Sec. 3. Priority of appropriation. -- Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

Sec. 4. Water divisions. -- The legislature shall by law divide the state into four (4) water divisions, and provide for the appointment of superintendents thereof.

Sec. 5. State engineer. -- There shall be a state engineer who shall be appointed by the governor of the state and confirmed by the senate; he shall hold his office for the term of six (6) years, or until his successor shall have been appointed and shall have qualified. He shall be president of the board of control, and shall have general supervision of the waters of the state and of the officers connected with its distribution. No person shall be appointed to this position who has not such theoretical knowledge and such practical experience and skill as shall fit him for the position.



COLORADO CONSTITUTION

ARTICLE XVI

MINING AND IRRIGATION

Irrigation

Sec. 5. Water of streams public property. -- The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

Sec. 6. Diverting unappropriated water -- Priority -- Preferred uses. -- The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agriculture purposes shall have preference over those using the same for manufacturing purposes.

Sec. 7. Right of way for ditches, flumes. -- All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation.

Sec. 8. County commissioners fix rates for water, when. -- The general assembly shall provide by law that the board of county commissioners in their respective counties, shall have power, when application is made to them by either party interested, to establish reasonable maximum rates to be charged for the use of water, whether furnished by individuals or corporations.



ALASKA CONSTITUTION

ARTICLE VIII

WATER RIGHTS

Sec. 13. All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Sec. 16. No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.



NEW MEXICO CONSTITUTION

WATER RIGHTS

- Sec. 7. A. All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.
- B. The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriation shall give the better right.
- C. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.
- D. In any appeal to the district court from the decision, act or refusal to act of any state executive officer or body in matters relating to water rights, the proceeding upon appeal shall be de novo as cases originally docketed in district court, unless otherwise provided by law.





PART IV  
SELECTED STATE STATUTES

IDAHO STATUTE

Section 42-101

Section 42-101. Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved.

KANSAS STATUTE

Section 82a-702

Section 82a-702. All water within the state of Kansas is hereby dedicated to the use of the people of the state, subject to the control and regulation of the state in the manner herein prescribed.



## WASHINGTON STATUTE

### Section 90. 03. 010

Section 90. 03. 010. Appropriation of water rights -- Existing rights preserved. The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this chapter provided. Subject to existing rights all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided and not otherwise; and, as between appropriations, the first in time shall be the first in right. Nothing contained in this chapter shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation, or otherwise. They shall, however, be subject to condemnation as provided in RCW 90. 03. 040, and the amount and priority thereof may be determined by the procedure set out in RCW 90. 03. 110 through 90. 03. 240.

## UTAH STATUTE

### Sections 73-1-1, 73-1-3

Section 73-1-1. Waters Declared Property of Public. All waters in this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof.

Section 73-1-3. Beneficial Use Basis of Right to Use. Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.



COLORADO STATUTE

Section 148-21-2

Section 148-21-2. Declaration of policy -- (1) It is hereby declared to be the policy of the state of Colorado that all waters originating in or flowing into this state, whether found on the surface or underground, have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation and use in accordance with law. As incident thereto, it shall be the policy of this state to integrate the appropriation, use and administration of underground water tributary to a stream with the use of surface water, in such a way as to maximize the beneficial use of all of the waters of this state. (This section includes other provisions (2a, b, c and d) related to the determination of water rights, uses and administration of Colorado water.)

CALIFORNIA STATUTE

Section 102

Section 102. All water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation in the manner provided by law.

